
OLR Bill Analysis

sSB 390

AN ACT CONCERNING CHANGES TO CIGARETTE REGULATION TO IMPLEMENT THE NONPARTICIPATING MANUFACTURER ADJUSTMENT SETTLEMENT AGREEMENT.

SUMMARY:

The law requires tobacco product manufacturers that sell cigarettes in Connecticut to either (1) enter into, and perform financial obligations under, the master settlement agreement between Connecticut and four leading tobacco companies or (2) pay into a qualified escrow account a specified amount for each cigarette they sell in the state. Tobacco companies that choose the former option are considered “participating manufacturers” and those that choose the latter are “nonparticipating manufacturers” (NPMs).

This bill makes numerous changes in the state’s tobacco settlement law to implement the NPM Adjustment Settlement Agreement (i.e., the May 24, 2013 settlement between the state and participating manufacturers). The agreement modified the tobacco master settlement agreement and, among other things, broadened the state’s enforcement responsibilities regarding illegal contraband cigarette sales.

Specifically, the bill:

1. beginning January 1, 2015, increases the frequency with which NPMs must make escrow fund payments and changes the basis for calculating the payments;
2. makes any importer for a NPM located outside the United States jointly and severally liable with the manufacturer for escrow fund deposits and any penalties imposed for violating the escrow requirements;

3. requires NPMs to file a surety bond with the Department of Revenue Services (DRS) as a condition of having their brand families listed in the DRS directory;
4. requires NPMs located outside of the United States to require each of their brand family importers to appoint and maintain a Connecticut agent for service of process;
5. imposes additional reporting requirements on participating and nonparticipating manufacturers; and
6. allows the (a) DRS commissioner to disclose certain tax information to the attorney general if it is relevant to the state's implementation of the master or adjustment settlement agreements and (b) attorney general to disclose the information under specific circumstances.

EFFECTIVE DATE: January 1, 2015

§§ 1-3 — ESCROW CONTRIBUTION

Basis and Frequency

The bill bases the escrow payment NPMs must make on the number of cigarettes sold in Connecticut that are subject to the cigarette tax or, in the case of roll-your-own tobacco, tobacco products tax, rather than basing it on actual excise taxes collected. It excludes cigarettes (1) sold on federal military installations, (2) sold by a Native American tribe to a tribe member on the tribe's land, and (3) otherwise exempt from state excise tax under federal law. As under current law, the payment applies to each cigarette sold in Connecticut by a covered manufacturer during the year in question, including both direct sales and sales through distributors, dealers, or similar intermediaries.

The bill requires DRS to adopt regulations needed to determine the amount of excise tax required to be paid, not just the actual tax paid, by each tobacco product manufacturer.

Under current law, NPMs annually pay into their escrow accounts a specified amount for each cigarette they sold in the prior year. For

sales in 2013, the escrow payment was \$.0299790 per cigarette (based on the 2007 amount of \$.0188482, as adjusted for inflation).

Beginning January 1, 2015, the bill (1) requires NPMs to make quarterly, rather than annual, escrow fund payments and (2) decreases the payment to \$.0188482 per cigarette, adjusted for inflation. It also requires them to certify to the attorney general that they comply with the escrow fund payments quarterly, rather than annually.

Penalties for Noncompliance

The bill makes any “importer” for a NPM located outside the United States jointly and severally liable with the manufacturer for escrow fund deposits and any penalties imposed for violating the escrow requirements. Under the bill, an “importer” is any person (1) in the United States to whom cigarettes manufactured in another country are shipped or consigned, (2) who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or (3) who unlawfully brings cigarettes into the United States.

By law, the attorney general may sue nonparticipating manufacturers that violate the escrow requirements and, if the court finds a violation, impose civil penalties of up to 5% of the improperly withheld amount for each day of violation, up to 100% of that amount. For a knowing violating, the penalty may be up to 15% of the improperly withheld amount per day up to 300% of that amount. For a second knowing violation, a violator is barred from selling cigarettes in the state, either directly or indirectly, for up to two years. Each failure to make the required deposit is a separate violation.

§§ 4-5 — CERTIFICATION REQUIREMENTS

The law requires all manufacturers (participating and nonparticipating) whose cigarettes are directly or indirectly sold in Connecticut to annually certify, by April 30 and under penalty of false statement, to the DRS commissioner and attorney general that, as of the certification date, they are either participating in the master settlement agreement or complying with escrow requirements for

nonparticipating manufacturers. The bill requires participating manufacturers to also certify that they are complying with the master settlement agreement's financial obligations.

The bill also requires each manufacturer to annually (1) certify that it or its importer holds a valid federal permit for engaging in such business (26 USC 5713), (2) provide a copy of the permit to the DRS commissioner, and (3) certify that it complies with federal tobacco manufacturer reporting and registration requirements (15 USC 375 et seq.). It bars manufacturers from including in their certifications any material representation that they know is false or inaccurate.

§ 6 — DRS DIRECTORY

By law, the DRS commissioner must make available to the public a directory of (1) manufacturers that have provided current and accurate certifications and (2) all brand families listed in those certifications. A brand family is a style of cigarette, such as menthol or lights, sold under the same trademark.

The bill generally prohibits the commissioner from listing brand families for any NPM with discrepancies in certain sales reports. The prohibition applies during any calendar year for which the NPM reports total nationwide federally taxable cigarette sales that exceed the sum of its sales on federally required monthly sales reports, by more than 5% of its total sales, or one million cigarettes, whichever is less. The sales reports are the (a) nationwide sales reports it or its importer submitted to DRS and (b) any intrastate sales reports (15 USC 376 (a)). Under the bill, if a NPM fixes or satisfactorily explains the discrepancy between the reports within 10 days after receiving notice of the discrepancy from DRS, the commissioner may include or retain its brand families in the directory.

§ 7 — AGENT FOR SERVICE OF PROCESS REQUIREMENTS

Under the bill, NPMs located outside of the United States must (1) require each of their brand family importers to appoint and maintain a Connecticut agent for service of process and (2) notify the DRS commissioner and attorney general of the agent in the same manner in

which the NPMs notify them of their agent for service of process. The bill makes the secretary of state the agent for any importer who has not appointed an agent. Proceedings against such an importer may be brought by serving process on the secretary, but the secretary's appointment does not satisfy the agent appointment requirements for having the manufacturer's brand families listed in the DRS directory.

§§ 5-7 — SURETY BOND

As a condition of having its brand families listed in the DRS directory, the bill requires NPMs to file a surety bond with the DRS commissioner for the greater of (1) \$25,000 or (2) the greatest amount of total escrow payments owed in any of the five calendar years before the bond's filing. The bond must be (1) in a form the attorney general approves and (2) issued by a bonding or insurance company authorized to do business in Connecticut. The bill also requires NPMs to include proof that they have posted the bond in their annual certification to the DRS commissioner and attorney general.

The bill allows the commissioner to execute on the bond if the NPM fails to make, or have made on its behalf, its required quarterly escrow deposits within 15 days following their due date. He may do so to recover (1) the delinquent escrow and (2) civil penalties and costs. The commissioner must deposit any delinquent escrow funds he recovers into a qualified escrow fund or a reasonable alternative account he determines. Any escrow amounts above the amount recovered on the bond remain due from the NPM and its importers.

§ 8 — INFORMATION SHARING

The bill allows the commissioner to disclose tax returns or return information (see BACKGROUND) to the attorney general if it is relevant to the state's implementation of the Master Settlement Agreement or the NPM Adjustment Settlement Agreement. It allows the attorney general to disclose the information under an agreement with an entity designated to serve as a data clearinghouse under the NPM Adjustment Settlement Agreement. He may also disclose a licensed cigarette or tobacco products distributor's tax information to a NPM that makes escrow fund contributions, as long as the disclosure

is limited to information relating to the NPM's Connecticut sales.

§ 8 — REPORTING REQUIREMENTS

Monthly Sales Reports

The bill requires each manufacturer and importer to file a monthly report with the DRS commissioner and certify that the report is complete and accurate. The report, which manufacturers and importers must file within 15 days following the end of the month, must include the (1) total number of cigarettes they sold in the state that month, identified by name and number, including those sold through an affiliate; (2) cigarette manufacturer and brand family; and (3) cigarette purchasers. Manufacturers and importers satisfy this monthly reporting requirement by submitting federally required monthly sales reports to the commissioner and certifying that they are complete and accurate.

Federal Excise Tax Returns

The bill requires each manufacturer and importer to submit to the (1) commissioner its federal excise tax returns and monthly operational reports within 30 days after the returns are filed or (2) Treasury a valid request or consent authorizing the federal Alcohol Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, United States Customs and Border Protection, to disclose the manufacturer's or importer's federal excise tax returns to the commissioner.

Additional Reporting Requirements

The bill requires manufacturers and importers to disclose to the commissioner or attorney general, upon request, copies of all federally required sales reports they filed in other states.

It also allows the attorney general to require NPMs, importers, and stampers to produce information to allow him to determine whether a quarterly escrow deposit is adequate.

BACKGROUND

Tax Returns and Return Information

By law, a “return” is any of the following filed with the DRS commissioner by, on behalf of, or with respect to, anyone: (1) a tax or information return; (2) an estimated tax declaration; (3) a refund claim; or (4) any license, permit, registration, or other application. The term also covers amendments or supplements, including supporting schedules, attachments, or lists that supplement or are part of a filed return.

“Return information” includes:

1. a taxpayer's identity;
2. the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax under- or over-reportings, or tax payments; and
3. any other data received, recorded, prepared, or collected by or furnished to the DRS commissioner regarding a return or regarding any determination of liability for a tax, penalty, interest, fine, forfeiture, or other imposition or offense (CGS § 12-15 (h)(1) & (2)).

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 50 Nay 0 (04/01/2014)